

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. 03-CV-12497

PREMIER CAPITAL, LLC)
Plaintiff,)
)
v.)
)
BEVERLY JOHNSON PENZELL,)
d/b/a Law Office of Kris E. Penzell)
and BEVERLY JOHNSON)
PENZELL, as Personal)
Representative of the Estate of)
Kris E. Penzell)
Defendants.)

DEFENDANT BEVERLY JOHNSON PENZELL'S
EMERGENCY MOTION FOR PROTECTIVE ORDER
AND REQUEST FOR SANCTIONS

The Defendant, Beverly Johnson Penzell ("Ms. Penzell") moves, pursuant to Fed.R.Civ.P. 26(c)(2) for a protective order allowing Premier to conduct the discovery of defendant's expert, Jerald Freshman, and fact witnesses, Susan Noe, Victor Rones and Beverly Penzell in Miami, Florida, at the offices of Jerald Freshman, 9155 S. Dadeland Blvd., Dadeland Centre, Suite 1014, Miami, Florida 33156, during the week of July 16, 2007, or alternatively, during the week of July 9, 2007. Moreover, that Premier further be ordered to make its expert, Richard P. Storfer, Esq., reasonably available during the week in which the afore-mentioned discovery proceeds at the offices of Jerald Freshman in Miami, as identified above.

Ms. Penzell has written to Premier on six separate occasions beginning on May 29, 2007 and placed countless phone calls to Premier in an effort to try to broker and coordinate the scheduling of the depositions of the parties' respective witnesses, as well as to schedule the depositions of the two inventory attorneys and Ms. Penzell. Copies of these communications to Premier attempting to schedule this discovery are attached as follows: E-mail from Joseph

Corrigan to Thomas Morrissey dated May 29, 2007 (Exhibit A); correspondence from Joseph Corrigan to Thomas Morrissey dated June 1, 2007 (Exhibit B); E-mail from Joseph Corrigan to Thomas Morrissey dated June 4, 2007 (Exhibit C); E-mail from Joseph Corrigan to Thomas Morrissey dated June 14, 2007 (Exhibit D); E-mail from Joseph Corrigan to Thomas Morrissey dated June 20, 2007 (Exhibit E); and E-mail from Joseph Corrigan to Thomas Morrissey dated June 26, 2007 (Exhibit F).

Although Ms. Penzell diligently contacted her witnesses and has been prepared to schedule these depositions since June 14th, Premier has made no effort to move forward with the scheduling of this discovery, despite the fact that it has only one witness to procure for deposition (Premier's expert, Richard Storfer). Undersigned counsel has for the past two weeks respectfully requested that defendants' expert, Jerry Freshman, and the remaining three fact witnesses hold up their summer vacation planning while counsel for Premier responds regarding depositions dates.

This situation was explained to Premier, on June 22nd in a telephone call between undersigned counsel and counsel for Premier. Premier indicated that it would get in contact with its witness (Richard Storfer) and confirm which week was acceptable to Premier to conduct the discovery in Miami. It was emphasized to Premier's counsel during that discussion, that a response was needed on this scheduling issue immediately. Regardless, Premier has not contacted Ms. Penzell to schedule the depositions and now very little time remains for booking the necessary plane tickets and making hotel arrangements.

The discovery deadline in this matter closes on July 31, 2007 and the parties are before the Court again on August 2, 2007. Accordingly, Ms. Penzell's has communicated her desire to

Premier to have this discovery completed before the parties go before this Court again on August 2nd. See Exhibit C, E-mail from Joseph Corrigan to Thomas Morrissey dated June 4, 2007.

On June 26, 2007, undersigned counsel wrote to counsel for Premier indicating that if he did not respond regarding the proposed schedule, that Ms. Penzell would seek this protective order and request that the Court issues sanctions related to costs of this motion and costs associated with Premier's consistent failure to respond to Ms. Penzell's numerous requests regarding scheduling this discovery. See Exhibit F, E-mail from Joseph Corrigan to Thomas Morrissey dated June 26, 2007.

On the morning of June 27, 2007 undersigned counsel left another voice message for counsel for Premier indicating that the relief requested herein would be sought if Premier did not take immediate action to try to schedule this discovery. As of the filing of this motion, Premier has not responded regarding the proposed discovery schedule.

Accordingly, Ms. Penzell respectfully requests that this Court grant her a protective order as outlined in the first paragraph of this motion. In addition, Ms. Penzell respectfully requests her attorneys' fees and costs for this motion and associated with the scheduling of these depositions.

Respectfully submitted,
BEVERLY JOHNSON PENZELL,
By her attorneys,

/s/ Joseph W. Corrigan
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Dated: June 27, 2007